

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHARLES SILAS, K83618,	)	
	)	
Petitioner(s),	)	No. C 12-2020 CRB (PR)
	)	
vs.	)	ORDER OF DISMISSAL
	)	
SAN QUENTIN STATE PRISON,	)	(Docket # 4)
	)	
Respondent(s).	)	
_____	)	

Petitioner, a prisoner at San Quentin State Prison, has filed a pro se petition for a writ of habeas corpus alleging inadequate medical care. He also seeks leave to proceed in forma pauperis under 28 U.S.C. § 1915.

Based solely on his affidavit of poverty, petitioner's request to proceed in forma pauperis (docket # 4) is GRANTED. But the petition for a writ of habeas corpus is DISMISSED without prejudice to filing a civil rights complaint under 42 U.S.C. § 1983.

Although the Supreme Court has not addressed whether a challenge to a condition of confinement may be brought under habeas, see Bell v. Wolfish, 441 U.S. 520, 526 n.6 (1979), the Ninth Circuit has held that habeas jurisdiction is absent, and a § 1983 action proper, where, as here, a successful challenge to a prison condition will not necessarily shorten the prisoner's sentence. Ramirez v.

1 Galaza, 334 F.3d 850, 859 (9th Cir. 2003). In addition, the preferred practice in  
2 the Ninth Circuit has been that challenges to conditions of confinement be  
3 brought in a civil rights complaint. See Badea v. Cox, 931 F.2d 573, 574 (9th  
4 Cir. 1991) (civil rights action is proper method of challenging conditions of  
5 confinement); Crawford v. Bell, 599 F.2d 890, 891-92 & n.1 (9th Cir. 1979)  
6 (affirming dismissal of habeas petition on basis that challenges to terms and  
7 conditions of confinement must be brought in civil rights complaint).

8 The clerk shall send petitioner a prisoner civil rights complaint form, enter  
9 judgment in accordance with this order, terminate all pending motions as moot,  
10 and close the file.

11 SO ORDERED.

12 DATED: June 1, 2012

13   
14 CHARLES R. BREYER  
15 United States District Judge  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26